STATE OF NEW YORK

518

2019-2020 Regular Sessions

IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sens. CARLUCCI, BROOKS, COMRIE, KAMINSKY, SAVINO, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to prohibiting the disclosure of personally identifiable information by an internet service provider without the express written approval of the consumer

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The general business law is amended by adding a new section 399-k to read as follows:

§ 399-k. Disclosure of personally identifiable information by an internet service provider; prohibited. 1. For the purposes of this section the following terms shall have the following meanings:

(a) "Consumer" means a person who agrees to pay a fee to an internet service provider for access to the internet for personal, family, or household purposes, and who does not resell access.

(b) "Internet service provider" (ISP) means a business entity or individual who provides consumers authenticated access to, or presence on, the internet by means of a switched or dedicated telecommunications channel upon which the provider provides transit routing of internet protocol packets for and on behalf of the consumer. Internet service provider does not include the offering, on a common carrier basis, of telecommunications facilities or of telecommunications by means of these facilities.

(c) "Personally identifiable information" means information that identifies:

(i) a consumer by physical or electronic address or telephone number;

(ii) a consumer's internet search history or internet usage history; or

(iii) any of the contents of a consumer's data-storage devices.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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2. Except as provided in subdivisions three and four of this section, an ISP shall not knowingly disclose personally identifiable information resulting from the consumer's use of the telecommunications or ISP without express written approval from the consumer.

(a) A telecommunications or ISP that has entered into a franchise agreement, right-of-way agreement, or other contract with the state of New York or any political subdivision thereof, or that uses facilities that are subject to such agreements, even if it is not a party to the agreement, shall not collect nor disclose personal information from a consumer resulting from the consumer's use of the telecommunications or ISP without express written approval from the consumer; and

(b) No such telecommunication or ISP shall refuse to provide its services to a consumer on the grounds that the consumer has not approved the collection or disclosure of the consumer's personal information.

3. An ISP may disclose personally identifiable information concerning a consumer:

(a) pursuant to a grand jury subpoena, in accordance with subdivision eight of section 190.30 of the criminal procedure law;

(b) pursuant to a warrant issued in accordance with article six hundred ninety or article seven hundred of the criminal procedure law;

(c) pursuant to a court order in a pending criminal proceeding upon a showing that such personally identifiable information is relevant and material to such criminal action or proceeding;

(d) pursuant to a court order in a pending civil proceeding upon a showing of compelling need for such information that cannot be accommodated by other means;

(e) to a court in a civil action for conversion commenced by the ISP or in a civil action to enforce collection of unpaid subscription fees or purchase amounts, and then only to the extent necessary to establish the fact of the subscription delinquency or purchase agreement, and with appropriate safeguards against unauthorized disclosure;

(f) to the consumer who is the subject of the information, upon written or electronic request and upon payment of any fee not to exceed the actual cost of retrieving the information;

(g) to another ISP for purposes of reporting or preventing violations of the published acceptable use policy or consumer service agreement of the ISP; except that the recipient may further disclose the personally identifiable information only as provided by this chapter; or

(h) to any person with the authorization of the consumer.

4. (a) The ISP shall obtain the consumer's authorization for the disclosure of personally identifiable information in writing or by electronic means.

(b) The request for authorization must reasonably describe the types of persons to whom personally identifiable information may be disclosed and the anticipated uses of the information.

(c) In order for an authorization to be effective, a contract between an ISP and the consumer must state that the authorization will be obtained by an affirmative act of the consumer.

(d) The provision in the contract must be conspicuous.

(e) Authorization shall be obtained in a manner consistent with guidelines issued by representatives of the ISP or online industries, or in any other manner reasonably designed to comply with this section.

5. The ISP shall take all reasonable and necessary steps to maintain the security and privacy of a consumer's personally identifiable information.

6. A consumer who prevails or substantially prevails in an action brought under this section is entitled to the greater of five hundred dollars or actual damages. Costs, disbursements, and reasonable attorney fees may be awarded to a party awarded damages for a violation of this section. The action available under this section is exempted from any mandatory arbitration clauses that may exist in the contract between the ISP and the consumer. In a civil action under this section, it is an affirmative defense that such information was released or otherwise available in violation of this section notwithstanding reasonable practices established and implemented by the defendant to prevent violations of this section.

7. This section does not limit any greater protection of the privacy of information under other law, except that:

(a) nothing in this section shall be deemed to limit the authority under other state or federal law of law enforcement to obtain information; and

(b) if federal law is enacted that regulates the release of personally identifiable information by ISPs but does not preempt state law on the subject, state law prevails.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law.